RECENT CASES

VENDOR AND PURCHASER—DEFICIENCY IN ACREAGE—REMEDY.—STRAUSS v. NORRIS, ET AL., 79 ATLANTIC, 611 (N. J.).—*Held,* that where through innocent mistake a vendor represented a tract of land as containing 82 acres, "more or less," and it was found to contain but 69, the purchaser, being ignorant of the deficiency, could sue in equity for reimbursement, the words "more or less" not being regarded as including a considerable variance.

The case under discussion is in accord with the modern rule that if there is little variance in acreage under a sale by the acre, "more or less," there shall be no adjustment, but if the discrepancy is great the injured party may recover in equity. 1 *Sugden on Vendors,* 369; *Couse v. Boyles,* 4 N. J. Eq., 212; and the English courts now agree with this. *Hill v. Buckley,* 17 Vesey, 401, but this is allowed only when the sale is explicitly designated as by the acre, *Barnes v. Sealey,* 2 Duer., 570; and some courts give relief only in case of gross mistake. *Quesnel. v. Woodlief,* 2 Hen. & Mun., 173 note. There are, however, many cases at common law which hold that when a sale has been completely performed, there can be no suit brought for adjustment on the ground that the vendee has had opportunity to protect himself by examination of the lands. *Evans v. Edmunds,* 13 C. B., 777, unless there is fraud. *Hart v. Swaine,* 7 Ch. D., 42; *Arkwright v. Newbold,* 17 Ch. D., 301. As far as the American decisions go regarding the expression "more or less," some courts hold as small difference ground for relief, as of 5 acres. *Stevens v. McKnight,* 42 Ohio, 341; *Wilson v. Randall,* 67 N. Y., 328; *Tarbell v. Brownson,* 103 Mass., 341, while others do not. *Weart v. Rose,* 16 N. J. Eq., 290.

GUARDIAN AND WARD—STAY—ACTION V. GUARDIAN—"AGENT."—PARKER V. WILSON, 137 S. W., 926 (ARK.).—*Held,* that a statute providing that no stay of action or judgment against any collecting officer or attorney at law or agent for delinquency in his duties shall be allowed does not apply to an action against a guardian, he not being an "agent" within the meaning of the statute. McCulloch, J., *dissenting.*

In accord with the case under discussion is the proposition often laid down that agency rests upon a contract. 2 *Kent Comn.,* 612; *Whitehead v. Tuckett,* 15 *East,* 400, and that statutes such as this are to be strictly construed. *Waller v. Harris,* 20 Wend. (N. Y.), 562; 1 *Story's Comn. on Const. Law,* § 407, 424, for the object of such reading is to bring sense into the statute, not sense out of it by introducing new material. *McCloskey v. Cromwell,* 11 N. Y., 602. The term *"agent,"* however, is of broad significance and a natural guardian has been held able to make an affidavit as agent for a minor. *Wilson v. Mo-no-chas.,* 40 Kans., 648, and an agent has been held to be one who undertakes to transact business for another and to render an account thereof, not necessarily in contract. *Metzger v. Huntington,* 139 Ind., 501; *Felsh v. Lindsay,* 115, Mo., 1.

JUSTICES OF THE PEACE—JUDGMENTS—REVIVAL.—AIRY V. SWINFORD, 136 S. W., 728 (MO.).—*Held,* that where a statute provided that no judgment

of a justice of the peace should be revived after 20 years from its rendition, there being no provision that absence would suspend such statute, that a judgment rendered in 1883, the defendant being absent thereafter from the jurisdiction till 1902, would not have been revived in 1908, even at common law.

The general common law rule is in accord with the case under discussion and holds that the statute begins to run from the time of accrual and may not be suspended. *Brown v. Houdlette,* 10 Me., 407; *Goodwin v. Wells,* 76 Iowa, 774; *Whiting v. Leakin,* 66 Md., 255; and so it has been held that inability to serve sentence on a defendant will not suspend the statute, *Amg. v. Watertown,* 130 U. S., 320, though in some jurisdictions the absence of a judgment debtor is taken into consideration somewhat. *Alston v. Hawkins,* 105 N. C., 3; *Kline v. Kline,* 20 Pa. St., 506; *Miller v. Smith,* 16 Wend, (N. Y.), 310. It has, however, been held that inability to sue, caused by *vis major,* stopped the running of the statute, though such an exception was not noted in the statute itself, *Braun v. Sauerwein,* 10 Wall (U. S.), 223; and some states recognize exceptions in cases of necessity, *Hill v. Phillips,* 14 R. I., 93, as where there was a debt due a British subject and the Revolutionary War prevented its collection, *Hopkirk v. Bell,* 3 Cranch (U. S.), 454, or where a debtor becomes the administrator of his creditor's estate, then the statute is suspended during the period of administration, *Norres v. Hays,* 44 La. Ann., 907, or where an infant, being seduced, would have had to bring suit in another's name, *Watson v. Watson,* 53 Mich., 168, and the English courts suspend the running of the statute in case there was no court in which the plaintiff might bring his action. *Graham v. Nelson,* 5 Humph. Term R., 605.

INTOXICATING LIQUORS—BURDEN OF PROOF—JUSTIFICATION.—BELL V. STATE, 137 S. W., 670 (TEXAS).—*Held,* that under a statute providing that where facts constituting an offense are proven, it devolving then upon the accused to establish matters of justification or excuse. The state is not bound, in a prosecution for selling liquors, to show that accused did not have a license for selling under prescription and thereunder make the sale, for it is a matter within the peculiar knowledge of the accused. Davidson, P. J., *dissenting.*

The general American rule holds that where the subject matter of a negative averment in an indictment is a matter peculiarly within the knowledge of the defendant and relied on by him as an excuse or justification, the burden of proof as to such averment is on him. *Burrill on Cir. Ev.,* 728; *Wharton on Cr. Law,* § 709, nor need the ground of defence be connected necessarily with the transaction on which the indictment is founded, *Commonwealth v. McKie,* 1 Gray (Mass.), 65; *Stewart v. Ashley,* 74 Mich., 189, and so when confessions of prisoners were introduced without showing that they were not obtained by improper representations the burden of proof to show that they were involuntary rested upon the accused. *Rufer & Egner v. State,* 25 Ohio, 470; 1 *Greenl. on*